

The time allowed by this order for putting in a sufficient answer having elapsed, and the defendant Thomas Tyson having failed to answer as required, the plaintiffs brought the matter before the Court, and moved that the case might proceed as against him, and the other defendants.

BLAND, C., 10th July, 1828.—Where the answer of the only person who has been made a defendant is, upon exceptions, held to be insufficient, the plaintiff is authorized, according to the English course of proceeding, to take the case up where it stood when the insufficient answer was filed, and proceed thenceforward against the defendant, so as to have him committed to custody until he does answer, or to have the bill taken *pro confesso*; because an insufficient answer is as no answer at all. *Child v. Brabson*, 2 Ves. 110; *Turner v. Turner*, Dick. 316; *Davis v. Davis*, 2 Atk. 24; *Darwent v. Walton*, 2 Atk. 510; *Gregor v. Ld. Arundel*, 8 Ves. 88. And so, where only one of the defendants stands in the situation of not having answered sufficiently, the like course must be had against him alone, so as to enable the plaintiff to proceed with effect against the other defendants. 1 *Fow. Exch. Pra.* 199; *Royall v. Johnson*, 1 *Rand.* 421.

Upon this principle, and as it has been provided by our Acts of Assembly, that, where a defendant fails to answer, the bill may be taken *pro confesso*; 1799, ch. 79, s. 1; *Clapham v. Clapham*, ante, 126; so here where only one of the defendants has contumaciously neglected to put in a sufficient answer, after his first had been determined to be insufficient, it must be allowable and is essentially necessary, to have bill taken *pro confesso* as against him alone, so as to enable the plaintiff to proceed safely and with effect against him together with the other defendants.

Whereupon it is decreed, that the bill of complaint be and the same is hereby taken *pro confesso* as against the defendant Thomas Tyson; and the plaintiffs are allowed further to proceed with their

561 *case, according to the course of the Court, in such manner as they may deem proper.

After which the defendants, who had some time previously put in their answers, by their petition prayed, that as the plaintiffs did not reside within this State, they might be ordered to give security for costs.

BLAND, C., 20th April, 1829.—As the origin and principles of the practice in relation to this matter do not appear to be as generally understood as they should be, I shall avail myself of this occasion to speak of the subject more fully than might otherwise be deemed necessary.